

U.S. Extractives Industries Transparency Initiative
Public Comment Period for Draft Candidacy Application – Fall 2013

Summary of Input Received
September 18 - November 18, 2013

Process Overview

The purpose of this Public Comment Period was for the United States Extractive Industry Transparency Initiative (US EITI) Multi-stakeholder Group (MSG) to conduct public outreach and receive public input about the draft US EITI Candidacy Application.

The Public Comment Period opened on September 18, 2013 and closed on November 18, 2013. During this time, members of the public were invited to comment on the draft US EITI Candidacy Application as well as on the US EITI initiative, as a whole, via the following channels: email, phone, physical mail, an online form, and a series of outreach meetings conducted for the general public or specific stakeholder groups.

The following public outreach meetings and *stakeholder outreach meetings (presented in italics)* were held as part of the Public Comment Period:

- New Orleans Public Meeting, Sept 24
- Houston Public Meeting, Sept 24
- San Antonio, *COPAS Meeting*, Sept 26
- Denver Public Meeting, Oct 22
- Denver, *State and Tribal Royalty Audit Committee (STRAC) Meeting*, Oct 23
- Anchorage Public Meeting, Oct 22
- Fairbanks, *Alaska Federation of Natives Presentation*, Oct 24
- Webinar, November 4
- Pittsburgh, November 14

The purpose of these public and stakeholder outreach meetings was to present on the process of the US application to become an EITI compliant country, to elicit clarifying questions, and to receive public comment on the draft US EITI Candidacy Application. Meeting summaries detailing the proceedings of each of these public and stakeholder outreach meetings can be found on the website for the US EITI process at the following URL:

<http://www.doi.gov/EITI/index.cfm>.

In addition, the Department of Interior, received 21 written comments, 2,584 form letters, and 265 additional form letters but with additional unique comments, for a total of 2,869 written

comments. These comments (or comments via the form letter) were organized into a document as well that can be found at the following URL: <http://www.doi.gov/EITI/index.cfm>.

Summary of Public Input Received

Many members of the public expressed support for the involvement of the United States in the EITI program. In addition, more specific comments and questions from the public were received about the following topics:¹

- Purpose and process of US EITI
- Representation and communication with regards to the US EITI MSG
- Scope and materiality of reporting (including unilateral reporting, public narrative, reconciled reporting)
- Reporting structure
- Application revision suggestions (*see just below*)

Members of the public made the following comments about specific portions of the draft candidacy application. These are summarized below by EITI Requirement. For a complete set of comments, please refer to individual comments at the URL noted above.

- Requirement 1.1:
 - Include additional statements of support from President and others.
 - Section fails to address the new ‘beyond transparency’ EITI Standard requirement for supplementary, contextual, and background information which clarifies the process. A thorough review of this new EITI Standard and how it will be included in the US EITI Candidacy Application should be undertaken.
 - Section fails to address numerous processes of implementation and instead lists them in Annex 3 as a request for adapted implementation. Instead, further effort should be invested in the processes of developing implementation actions for US EITI.
- Requirement 1.3:
 - Encourage greater outreach to Tribes and non-English speaking groups.
 - Take more steps (website, language of materials, notice re: public sessions) to involve the public.

¹ Additional comments were also received about topics not directly germane to US EITI or the draft candidacy application. These can be found in the meeting summaries from each of the public and stakeholder meetings and in the written comments, all posted on-line at the noted URL.

- Requirement 1.4:
 - *Scope and Materiality:*
 - US EITI should include project-level reporting as was agreed to in the new EITI standards adopted in May 2013. “Project” should be defined in line with the rules and guidance issued by the SEC in August 2012 pursuant to Section 1504 and the European Union definition included in the Transparency and Accounting Directives.
 - If revenue numbers are tabulated for disclosure only for multinational corporations across the nation as a whole, this will mask vital information about the performance of the corporations (including subsidiary corporations) at different projects such that citizens will not be able to monitor disclosures most relevant to understanding the operations that affect them. It would be most helpful if the charts are compiled for each State and then summarized across the nation for each company.
 - Production data should be included for hard rock minerals.
 - Encourage inclusion of renewable resources in US EITI reporting.
 - US EITI should include proven reserves data.
 - Community impact of the extractive industries should be included.
 - All annual extractive industry revenues should be reported, not just 80% in the first year or 90% in the second year. Otherwise, reporting is not comparable between years.
 - The third-party reconciliation should be done for 100% of corporations. Otherwise, companies that made payments made primarily to other government agencies, or which receive significant tax subsidies, or some other unusual situation, may affect the reporting and thresholds in some years.
 - Urge that the scope of US EITI be expanded as quickly as possible to include reporting and disclosure around chemical use, emissions, and environmental impact, including air, water, noise, climate, and other pollution.
 - Disclosing production data alongside payment information would provide the public with a more complete picture of the value received for natural resources.
 - US EITI should require transparency of beneficial ownership information from extractives companies. Accordingly, the Department of the Interior should investigate the necessity for a rulemaking process to require that companies submit ownership information that is not currently being collected.
 - *Legal and Other Constraints*
 - The application’s considerations related to the Trade Secrets Act may have significant implications for the disclosures required by USEITI, especially at the company and project levels. Investors urge US EITI to define “project” in a

manner that yields publicly available company-specific data that is consistent with US and EU disclosure laws.

- We are concerned about inclusion of the Trade Secrets Act. It has been our experience that industry invokes the Act to hide critical information that the public needs for health and safety.
- The suggestion offered in the application that references tax disclosure treatment in Dodd-Frank Section 1504 would be useful and would support the concept of consistent disclosure. The consideration of tax disclosure may also benefit from comparison to EU law and EITI implementation in other jurisdictions.
- The US EITI report should include full industry tax disclosure because of tax fairness and revenue collection concerns.
- *Adaptive Implementation and Subnational Reporting*
 - The application needs stronger justification for adaptive implementation and subnational reporting.
 - The federal government and US EITI must do more to encourage states and tribal governments to opt in. For example, one or two states and tribal governments should be identified as pilots.
 - A clearer process must be laid out for state and tribal opt-ins.
 - It is vital that extractive industry revenues to States be compiled and disclosed. As such, we do not support *Annex 3, Request for Adapted Implementation*, because State revenue disclosure is vital to the public and affected citizens.
 - US EITI should develop guidance on good practice in subnational reporting and support pilot initiatives, such as reporting on public monitoring of community development spending.

Members of the public asked the following types of questions about the purpose and process of US EITI:

- What are the benefits of multi-stakeholder governance structure?
- How will EITI benefit tribes and states?
- Will EITI create a competitive disadvantage for industry?
- How does the US EITI MSG share and compare experiences with other EITI countries?

Members of the public asked the following types of questions about how the Multi-stakeholder Group (MSG) represents constituencies and communicates internally and with those constituencies:

- How do MSG members communicate / coordinate with their own sectors within the MSG and with others in their sectors outside of the MSG?

- Will MSG seats be reserved for renewables representatives if the MSG lowers the materiality threshold in the future?
- Will MSG seats be reserved for future potential commodities like timber and fisheries?
- Are there tribal representatives on the MSG? Are they considered Civil Society or Government Representatives?
- Are any of the MSG industry representatives from small businesses?
- Are the industry representatives on the MSG only from US-based companies?
- More outreach should be conducted to the general public, Native American tribes, populations that do not speak English, as well as to Congressional representatives and staff.

Members of the public inquired about whether the following types of revenue would be included in US EITI reporting:

- Fees paid to ONRR
- State income taxes
- Corporate income taxes
- Excise taxes
- State receipts
- Royalty-in-value and royalty-in-kind
- Payroll taxes, such as social security taxes
- Retroactive data
- Settlement or compensation payments
- Oil Spill Liability Trust Fund (OSLTF)
- Rents and fees collected by government agencies other than the Department of the Interior
- Criminal and civil fines for violations of environmental or worker safety laws

Members of the public inquired about whether the following items would be included in US EITI valuations or reporting:

- Natural gas exports
- Environmental impacts, such as on water quality
- Mines, oil, and gas on state lands
- Timber
- Renewables
- Fisheries
- Various government subsidies to companies engaged in extractive activity

Members of the public asked the following types of questions about US EITI's reporting structure:

- Will the first reconciliation report cover more than one year?
- Is reporting by calendar year or government fiscal year?
- How will mergers and acquisitions be handled?
- Is the reconciliation an audit?
- How are taxes, like income and excise, being handled?
- Will reporting be project-by-project, by company, or by region? All of these are important in different ways.
- How does US EITI deal with subsidiaries – e.g. BP Alaska vs. BP America?
- Will reporting be by SAIC number or by industry – oil vs. gas vs. hard rock?
- When US EITI reports on federal receipts, will it be clear about the fact that state receipts are not included?